# IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**Regular Second Appeal No.493 of 2003 (O&M)**
**Date of Decision : 16th May, 2011**

Punjab State & others

….Appellants

Versus

Jasbir Singh Jandu

….Respondent

**CORAM :- HON'BLE MR. JUSTICE L. N. MITTAL**

PRESENT : Mr. Vivek Chauhan, AAG, Punjab, for the appellants.

Mr. Sarjit Singh, Senior Advocate with
Mr. Jagdev Singh, Advocate for the respondent.

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**L. N. Mittal, J. (Oral)**

**CM No. 6843-C of 2010**

This is application by appellants for condonation of delay of 128 days in filing the appeal. Averments made in the application, which are supported by affidavit, do not satisfactorily explain the aforesaid delay. However, adopting liberal approach, the application is allowed and delay of 128 days in filing the appeal is condoned.

**CM No. 6844-C of 2010**

Allowed as prayed for

**CM No. 6845-C of 2010**

This application for additional evidence is dismissed as not pressed.

**Main Appeal:**

Defendants-Punjab State and its officers are in second appeal, having lost in both the courts below.

Respondent-plaintiff was in the service of defendants and retired on 31.12.1997 as Sub Divisional Officer (SDO) in Irrigation Department. The plaintiff's grievance in the suit was regarding non-grant of step up increments on completion of 4, 9 and 14 years of service as SDO w.e.f. 01.01.1996 when the revised pay scales came into force. However, step up increments on completion of 4 and 9 years service were granted to the plaintiff and the dispute remained regarding grant of step up increment on completion of 14 years' service.

Defendants contested the suit and contended that claim of plaintiff for step up increments on completion of 4, 9 and 14 years of service was considered and rejected because FIR No.121 of 1997 stood registered with Punjab State Vigilance Bureau. It was pleaded that on account of pendency of the said criminal case, plaintiff is not entitled to step up increments in question. Various other pleas were also raised.

Learned Civil Judge (Junior Division), Jalandhar vide judgment and decree dated 30.08.2006 decreed the plaintiff's suit, holding him entitled to step up increment on completion of 14 years' service also in accordance with revised pay scales as per notification dated 19.05.1998 effective from 01.01.1996 and directing the defendants to pay the same

alongwith interest @ 6% per annum on the arrears. Defendants preferred first appeal against judgment and decree of the trial court. Respondent-plaintiff filed cross-objections in the said appeal, claiming interest at higher rate. Learned Additional District Judge, Jalandhar vide common judgment and decree dated 19.10.2009 dismissed the appeal as well as the cross-objections. Feeling aggrieved, defendants have filed the instant second appeal.

I have heard learned counsel for the parties and perused the case file.

Learned counsel for the appellants vehemently contended that the plaintiff was promoted as SDO w.e.f. 18.02.1983 and he was on probation for two years and after he completed probation period on 18.02.1985, he did not complete 14 years of service as SDO till his retirement on 31.12.1997 and therefore, the plaintiff is not entitled to step up increment on completion of 14 years' service. The contention is completely meritless and unacceptable. In the first instance, no such plea that probation period of two years shall not count for calculating the length of service for grant of step up increment, was taken in the written statement and therefore, this plea can not be raised for the first time in second appeal. On the contrary, in the written statement, it was pleaded that on account of pendency of FIR No. 121 of 1997, the plaintiff is not entitled to step up increments. However, the said FIR had not been registered against the plaintiff and had been registered against some other employees and therefore, plaintiff could not be denied step up increments on account of pendency of said FIR. Secondly, even on principle, probation period has to

be counted to calculate the length of service for step up increments. There is no rule or precedent to exclude the probation period for grant of step up increments on the basis of length of service. On the contrary, this court in Judgment dated 17.05.2007 in ***RSA No.1444 of 2007 titled Chief Secretary Govt. of Punjab and others versus Dharam Pal Rishi***, upheld the judgments and decrees of the courts below in that case, counting the service of employee from the date of appointment and not from the date of completion of probation period. Said judgment of this court was upheld by Hon'ble Supreme Court by dismissing special leave petition preferred by State of Punjab and others vide order dated 21.03.2008 bearing CC No.3884 of 2008. Consequently in the instant case also, probation period has also to be counted for computing the length of service to determine entitlement of the plaintiff for step up increment.

However it has to be clarified that plaintiff is entitled to step up increment on completion of 14 years of service w.e.f. 18.02.1997 when he completed 14 years' service as SDO and not w.e.f. 01.01.1996 when the revised pay scales came in to force.

For the reasons aforesaid, I find no merit in the instant second appeal. There is no illegality or perversity in the judgments of the courts below, warranting interference in second appeal. No question of law, much less substantial question of law, arises for determination in this second appeal. Accordingly, subject to clarification in the preceding paragraph, the instant second appeal is dismissed.

**(L. N. MITTAL)**

**JUDGE**

**16th May, 2011**
*'raj'*